

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

JOHN BARNHARDT, ET AL

Plaintiffs

V.

CASE NO. 4:65-cv-1300-HTW-LGI

MERIDIAN MUNICIPAL SEPARATE  
SCHOOL DISTRICT

Defendant

**TRANSCRIPT OF STATUS CONFERENCE**  
**VIA VIDEOCONFERENCE**

BEFORE HONORABLE HENRY T. WINGATE  
UNITED STATES DISTRICT JUDGE

May 18, 2023  
Jackson, Mississippi

The proceedings were reported by a stenographic court reporter.  
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APPEARANCES:

REPRESENTING THE PLAINTIFFS:

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REPRESENTING THE DEFENDANT:

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REPRESENTING THE INTERVENOR:

Natane Singleton, Esquire  
Aria Vaughan, Esquire  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

ALSO PRESENT:

Dr. Amy Carter, Superintendent  
Meridian Public School District

Ms. Jamie Dole, Paralegal

1 (May 18, 2023, 9:02 a.m.)

2 THE COURT: Call the roll, please.

3 THE COURTROOM DEPUTY: Your Honor, this is Barnhardt  
4 v. Meridian Municipal Separate School District, Cause  
5 Number 4:65-cv-1300. Appearing today on behalf of plaintiff is  
6 Mr. John Cusick. Appearing on behalf of Meridian School  
7 District is Mr. John Compton, Mr. John Hooks, Dr. Amy Carter,  
8 superintendent. Also appearing, Jaime Dole, the paralegal for  
9 Mr. Hooks. And appearing on behalf of the United States is  
10 Aria Vaughan and Ms. Natane Singleton.

11 THE COURT: All right. Thank you.

12 Good morning, everyone.

13 MR. HOOKS: Good morning, Your Honor.

14 MS. SINGLETON: Good morning.

15 THE COURT: We just had a session on yesterday, and  
16 then I called you back today. And here is the reason why I did  
17 so. I want to get your thoughts on something that concerns me.  
18 I was going back through the information before we had the  
19 hearing on yesterday, and I was trying to visualize some  
20 things. And then I looked at a note I had in the files to  
21 myself, and that note was, Go over and actually view the  
22 premises. I haven't done that. I would like to do that.

23 And so I would actually like to view all of the premises  
24 in question here to get a feel for them, to put an eyeball on  
25 them, and to see exactly what I'm looking at. So then I want

1 to let you-all think about that for a moment. And when I come  
2 back to you, I want you to tell me whether you have any  
3 objections to it and also when you think we might be able do  
4 that.

5 Secondly, it occurs to me that if I'm going to come over  
6 there to take an eyeball look at everything, then why not  
7 advise to the community that those who have comments pro or con  
8 on this matter concerning the middle school just to come and  
9 announce what their feelings are on the matter if they wish to  
10 do so because I will bring with me a court reporter, and then  
11 we can take all of that down, and then that will save anybody a  
12 trip who later wants to say something to the court, he can  
13 write a letter. But since I will be over there, then why not  
14 do that too, combine the two approaches.

15 If we agree about doing this, I would anticipate that I  
16 will come over there early one day, Friday or Saturday, and  
17 then conclude that day, and I'll be back here in Jackson  
18 sometime later that afternoon or that night, but nevertheless  
19 to give everybody a fair opportunity to tell the court what  
20 they have pro and con on this particular matter.

21 Now, the reason why I want the people to come and tell me  
22 this is because there appears to be a question of fact as to  
23 what the community thinks on this matter. Now, Dr. Carter said  
24 that she talked to a number of people who testified previously,  
25 and she is of the opinion that they have now signed onboard in

1 support. And on the other hand, Mr. Cusick, who represents  
2 plaintiffs, has said that he hadn't had enough time yet to talk  
3 to everyone but he still is of the impression that are those  
4 who were opposed.

5 That would then bring up a question of fact about how some  
6 persons in the community feel about this matter. If I'm going  
7 to be over there to make a review of the schools, the plants  
8 themselves, then I'd just as well hear from the people while  
9 I'm over there and save the court some time and them some time  
10 because I'll be there.

11 So I want you-all just to think about that just a moment,  
12 and then tell me what you think about it. So if y'all need to  
13 consult with each other or anybody else, then do so. But I  
14 need to have an answer because, if we're going to do this, I  
15 still want to be able to craft my opinion no matter how it  
16 comes out as fast as possible, but I will not be able to meet  
17 the two-week time period. I might have to push it back a week  
18 in order for me to be able to digest the comments and any  
19 matters that I personally observe on my tour. But I want to  
20 incorporate all of that in my opinion one way or the other.

21 And I want to do this as fast as possible, that is,  
22 submitting my opinion on this matter because I know that we  
23 need to reach some sort of consensus or conclusion on this  
24 matter so that there is no delay in opening school however and  
25 wherever school will be opened. So I want to make sure that I

1 can do this stuff as fast as possible.

2 Now, Terri, you can cut them off for one moment, can't  
3 you?

4 THE COURTROOM DEPUTY: I can look and see. Give me  
5 one second, Judge.

6 Yes, I should be able to mute them.

7 THE COURT: Terri is going to mute everybody who is  
8 on the line. So if y'all need to make another telephone call  
9 or talk with each other, then go right ahead. And I'll give  
10 you 15 minutes to do this. And again, the first question is  
11 whether you have any objections to either one of the  
12 approaches; and secondly, if you agree on either one of the  
13 approaches for my coming over there, then give me the best date  
14 for this that will suit your schedule. I will try and work  
15 around yours.

16 So 15 minutes. And she's going to mute it now. And then  
17 in 15 minutes she will unmute it. All right. We are now  
18 muted. Go ahead and mute it now, Terri.

19 THE COURTROOM DEPUTY: It's muted.

20 THE COURT: Okay. Good.

21 (Recess from 9:10 a.m. until 9:25 a.m.)

22 THE COURT: We're back on the record, and all of the  
23 individuals previously with us are with us again.

24 I'll start with the plaintiff, Mr. Hooks. You're not the  
25 plaintiff on this matter.

1 THE COURTROOM DEPUTY: Mr. Cusick.

2 THE COURT: I know it, but I was going to start with  
3 Mr. Hooks is who I was going to start with because of my  
4 left-hand side right here. So where are you?

5 MR. HOOKS: I represent the school district.

6 THE COURT: Right.

7 MR. HOOKS: Yes, sir. Well, I talked to Dr. Carter  
8 and Mr. Compton during the break. And while the school  
9 district always welcomes the court to come and view facilities  
10 and so forth at the school district court, of course, the  
11 facilities really -- or the comparability of the facilities is  
12 really not the issue here, we don't think, before the court.  
13 But nevertheless, the court is welcome to come and see.

14 We do have some concerns, however, about having a  
15 community meeting in which individuals come and present  
16 information, because if a court reporter is there and so on,  
17 questions about the presentation of evidence,  
18 cross-examination, what preparation the school district's  
19 attorneys might have to what individuals are going to say,  
20 creating a workable format for that is probably going to be  
21 problematic and something the school district is not  
22 comfortable with.

23 However, one of the things that we do believe is very  
24 important is to return to the idea of looking at the  
25 August 9th, 2019, motion in which is pending right now is

1 Document Number 158 in which the parties agreed that this  
2 matter needs to be settled and resolved. And, Your Honor, we  
3 worked very, very hard on getting to that point over a  
4 multiyear process to having the Legal Defense Fund agree that  
5 the matter needs to be resolved.

6 We have proposed previous dates for a fairness hearing,  
7 and we are happy to repropose dates. We would need, however, a  
8 date certain for the fairness hearing for the court, and we can  
9 work backward and suggest, upon agreement by the parties, some  
10 dates for the court to present the fairness hearing. But prior  
11 to that, we would have to put newspaper notices out as required  
12 by law and to give members of the public an opportunity to  
13 either object or to indicate their support for unitary status.  
14 That would provide the court an opportunity to look at the case  
15 globally and holistically as part of an effort to resolve the  
16 case and to dismiss the case. And so we would encourage that  
17 to become the priority in terms of hearing evidence globally  
18 about the case.

19 But with regard to Carver Middle School, we would stress  
20 that Carver, in the current configuration, of course, is not  
21 set to be closed, but opened. And under the proposal before  
22 the court, some approximately 515 elementary students would  
23 attend school in that building, whereas before, as a middle  
24 school, it was barely 300 who were attending. So there's a  
25 much more robust program of instruction proposed to be offered



1 at Carver now, so I don't understand how members of the public  
2 would be in disagreement in any fashion with regard to the  
3 proposal before the court to open Carver as an elementary  
4 school.

5 Even if there are disagreements about that and the  
6 superintendent is not aware of a single person who has come to  
7 her or expressed any concern about Carver being opened as a  
8 middle school, but even so, we would suggest that that's the  
9 type of decision the school board is entrusted to make on  
10 behalf of the district, as opposed to members of the community,  
11 again, none of whom have, to the superintendent, expressed any  
12 objection to that as an idea.

13 So Your Honor, we'd also stress too that graduation is  
14 upon the district and year-end closures. Personnel will be  
15 busy with various affairs in terms of closing, and so we're  
16 concerned also about getting a decision quickly from the court  
17 with regard to this latest proposal, but also leaving this  
18 meeting today with a date certain as to when we will have a  
19 unitary status fairness hearing. I think those are two  
20 critical objectives for the school district.

21 We are prepared, as soon as tomorrow however, to hear by  
22 Zoom or to have -- or we'd suggest the court hear by Zoom any  
23 information the court might deem relevant from these  
24 individuals Mr. Cusick claims might exist out there, most  
25 especially those who came before the court last August to

1 present some testimony regarding the closure of Carver Middle.  
2 The information we have is that those people are satisfied that  
3 it will reopen as an elementary school.

4 So we would encourage the court maybe to solicit some  
5 information by way of testimony from those individuals by Zoom  
6 so as to make sure the prospect of hearing that testimony does  
7 not delay the school district's very urgent consideration for  
8 what happens at Carver going forward.

9 THE COURT: All right. Thank you.

10 I'm going across the top. Dr. Carter.

11 Dr. Carter.

12 DR. CARTER: Good morning, Your Honor. I'm thinking  
13 you called for me to speak at this time. Attorney Hooks shared  
14 the sentiments. I wouldn't have a problem with you coming to  
15 see the facilities. My concern is at this point being able to  
16 hear the voices of anyone who has an issue with us moving  
17 forward with reopening Carver as an elementary school.

18 I hosted community meetings. I even hosted a special  
19 meeting for those individuals who were part of the Carver  
20 Coalition because I wanted them to know that I heard their  
21 voices, and I heard the concerns that they expressed about the  
22 school being closed. And so when I proposed the  
23 reconfiguration for elementary school, I had several of the  
24 members who were on the call with you last August, they were a  
25 part of that meeting, and they expressed support for us

1 reopening as an elementary school.

2 Now, if something has changed or Mr. Cusick has some  
3 information that I don't have, I think it would be fair for  
4 those same individuals to come before the court and express  
5 those concerns so that we can make those duly noted and move  
6 forward.

7 THE COURT: Justice. Department of Justice.

8 MS. SINGLETON: Yes, Your Honor. We don't have much  
9 to add other than that we defer to the court if the court would  
10 like to visit the schools and set up a community meeting.

11 THE COURT: Okay. The top?

12 Call her out. I don't think she can hear me.

13 THE COURTROOM DEPUTY: Ms. Vaughan.

14 MS. VAUGHAN: Your Honor, I agree with Ms. Singleton.  
15 She's speaking on behalf the United States today. Thank you.

16 THE COURT: Okay. Then down to the bottom down here.

17 THE COURTROOM DEPUTY: Mr. Compton.

18 MR. COMPTON: Your Honor, Mr. Hooks has spoken for  
19 the district, and I would concur with him.

20 THE COURT: Okay. And now the last one.

21 THE COURTROOM DEPUTY: Mr. Cusick.

22 MR. CUSICK: Thank you, Your Honor. On the first  
23 question, we don't have any concerns if Your Honor thinks it's  
24 beneficial to do any visit or site visits for facility reasons.  
25 The second question regarding community members, I think,

1 again, we don't want to conflate the two issues in front of the  
2 court right now. I think Your Honor mentioned it is just on  
3 the closure of Carver Middle School.

4 And the district had an opportunity to bring community  
5 members at that evidentiary hearing back in August 2022. They  
6 didn't bring anybody in support of that motion. They did not  
7 offer any declarations in support of that motion from community  
8 members. They haven't since then provided any other updates  
9 that could be produced as evidence before then.

10 So we have concerns about now, seven months later, trying  
11 to repackage part of the evidentiary record that was before  
12 this court. So that's one issue. Second, again to Mr. Hooks'  
13 point, the issue on the elementary reconfiguration, it's the  
14 plaintiffs' position that before we can make an assessment on  
15 that the closure of Carver Middle School needs to be assessed.

16 So I just don't want to, again, conflate it seems like  
17 some of the issues going on here and what would be beneficial  
18 for community member purposes in those discussions. But if  
19 Your Honor is still wanting to move forward with some sort of  
20 community hearing, we would certainly be open to it. I don't  
21 think -- I think if there is going to be a record reopened that  
22 it's beneficial to hear from all community members who might be  
23 interested, and we think that would be parents whose children  
24 would be eligible to attend Carver Middle School were it not  
25 closed.

1 We'd be happy to talk with the district and the court  
2 about any notice to make sure that the word gets out and  
3 members are informed and also to think through what the format  
4 both of presentation and the place would be, again, working  
5 with the district and the Department of Justice and Your Honor  
6 for all of those points.

7 So again, I think on just the Carver Middle School  
8 closure, because it seems that's what Your Honor would like to  
9 hear further potential testimony from, if it were that, that's  
10 the route we would go. But from -- again, initially from a top  
11 note, we think that we can rest on the evidence that was  
12 presented from this court more than seven months ago.

13 THE COURT: But you are saying that seven months ago  
14 that the district did not meet its burden on this point and did  
15 not present any testimony that was urging on this point,  
16 correct?

17 MR. CUSICK: Yes. I mean, obviously Dr. Carter did  
18 in her capacity as superintendent. But our point was that  
19 there were no community members that were presented at that  
20 evidentiary hearing, and the district had an opportunity to do  
21 so or whatever other evidence that they deemed necessary in  
22 support of that motion during that hearing from the community  
23 members.

24 And so now that it's seven months later, one of our  
25 concerns is if the record is now reopened that it shouldn't

1 just be limited to just a few community members. It should  
2 actually be open to all community members who might have  
3 children who would be eligible to attend Carver Middle School.  
4 And so again, if that's the route Your Honor thinks would be  
5 beneficial that some more input on that fact, though we don't  
6 think it's necessary, we would be open, like the Department of  
7 Justice said, to a more fuller community meeting.

8 THE COURT: Say that last sentence again. You'd be  
9 open to what?

10 MR. CUSICK: To a meeting that is not limited to just  
11 a few members of the public, that is open and that there's some  
12 notice for potentially all parents who have children who would  
13 attend Carver Middle School, if the record, again, is going to  
14 be extended or reopened.

15 THE COURT: And if the record is going to be  
16 reopened, what kind of time frame would you suggest for this  
17 court to approach that matter and should the court do so in  
18 Meridian or up here in this courtroom?

19 MR. CUSICK: Your Honor, I think -- I mean, part of  
20 it will be dependent upon what the notice requirement is and  
21 ensuring people both have an opportunity to see it and also  
22 have enough time to plan, including the day of the week. We're  
23 happy to talk to the school district and members of the  
24 community. Our initial sense would be probably, for  
25 accessibility purposes, it might be helpful to have it in

1 Meridian, especially if Your Honor is hoping to seek more  
2 input. But we're happy to talk, again, with the district and  
3 the community members on some of those questions.

4 In terms of the time frame, depending on the notice and  
5 what we think is helpful, it could be maybe giving at least a  
6 two-week notice so there's an opportunity to -- folks can at  
7 least plan, especially as we head into the summer. So that's  
8 initially what our thinking is, but happy to hear too from the  
9 district if they have any additional thoughts on that time  
10 frame or otherwise.

11 THE COURT: Okay. Let me go back to Mr. Hooks.  
12 Mr. Hooks, in view of what Mr. Cusick says, what's your  
13 position now?

14 MR. HOOKS: Your Honor, what he just said makes no  
15 sense to me, because he wants to, I guess, have a hearing  
16 that's limited specifically to hearing about the closure of  
17 Carver Middle School. And I don't understand how a member of  
18 the public who's interested in this subject at all is going to  
19 sit before the court and talk just in isolation about that  
20 issue without presenting to the court consideration of the fact  
21 the district proposes to reopen that school as an elementary  
22 school with more students in it who were there in the first  
23 place. So his argument is nonsensical.

24 Also, we have before the court a motion for settling this  
25 case. Mr. Cusick agreed four years ago, four years ago, Your

1 Honor, that the district had no remaining desegregation issues  
2 and presented a joint settlement agreement to this court, which  
3 this court has never ruled on and has never set a date on that  
4 motion.

5 The primary responsibility for this court is to rule on  
6 that four-year old motion, not to allow members of the  
7 community to parade in endlessly and talk about this subject or  
8 that. The community is already represented by a school board  
9 who has been elected and makes decisions for the school board.

10 There's no desegregation issue presented whatsoever by the  
11 closure of Carver Middle School or the reopening of it of as an  
12 elementary. There are no desegregation issues with regard to  
13 that. Those resulting racial percentages of student enrollment  
14 exactly mirror the district's overall racial percentage of  
15 enrollment, so what he's arguing for makes no sense.

16 THE COURT: Mr. Cusick.

17 MR. CUSICK: Yes, Your Honor. I think we would not  
18 view community members raising concerns about Carver Middle  
19 School as being paraded into the school district. We think if  
20 there is a benefit it's helpful to do so. Again, just for  
21 clarification purposes, and I know Mr. Hooks wasn't at the  
22 evidentiary hearing back in August, but our position is that a  
23 ruling on the initial motion is necessary in addition before we  
24 can move forward on the proposed settlement.

25 There is an active desegregation order. The school



1 district did not seek proper approval before moving forward on  
2 their decision. And so from that sense, that's our same  
3 position as it was more than eight months ago. It has not  
4 changed. I think this is another reason why whatever  
5 representations the school district wants to make right now, if  
6 they are true and accurate, then there seems to be no reason  
7 why you would go back to hear from community members on that  
8 point.

9 Again, we don't think it's necessary to do so because the  
10 record is there. Folks had an opportunity to do so under oath  
11 and to hear directly from the court. Nobody was presented more  
12 than eight months ago or seven months ago.

13 And so again, I wouldn't characterize these arguments as  
14 nonsensical, but before the court is just the motion on whether  
15 to close Carver Middle School, and that's our same position.  
16 We don't want it conflated. And we haven't changed our opinion  
17 either on that motion or our position that a ruling needs to  
18 happen on that before any other reconsideration of the  
19 elementary reconfiguration plan or the joint settlement motion.

20 And as we mentioned in the joint status conference, we  
21 anticipate and hope to move forward after we hear from the  
22 court, whatever the court deems that whether Carver Middle  
23 School was properly closed and the district met its burden.  
24 But until then, those are our points. And again, I just want  
25 to direct the court, there's only a single motion right now

1 before the court on Carver Middle School closure.

2 THE COURT: Mr. Cusick, what is the physical status  
3 of Carver Middle School right now?

4 MR. CUSICK: I'm sorry, Your Honor. You said the  
5 physical status?

6 THE COURT: Yes.

7 MR. CUSICK: That I don't think right now I would be  
8 in a position to answer adequately.

9 THE COURT: Is it fit for students at present?

10 MR. CUSICK: Again, Your Honor, we would have to --  
11 if Your Honor thinks it would be helpful to have some sort  
12 of -- for us to consult and to see if an expert would be  
13 helpful from a facility's perspective to do so and inspect,  
14 we'd be happy to do so. But at this moment, I don't think we  
15 would be able to answer that one way or another without being  
16 able to go to the building and to look.

17 THE COURT: Without being able to do that?

18 MR. CUSICK: Without having an opportunity to look  
19 and inspect the building with somebody who has expertise on it.

20 THE COURT: Does that mean that presently you are  
21 asking the court to grant a motion to keep open or to open a  
22 facility whose strengths or weaknesses you do not know, that  
23 is, whether their facility is fit for student occupation?

24 MR. CUSICK: We were unaware of any reasons why the  
25 facility would have been unable to when the board approved it

1 more than ten months ago now. I don't think the physical  
2 infrastructure was raised as a concern for its closure. I know  
3 declining student enrollment, retention, and some of the other  
4 issues that Dr. Carter and the district represented. But I  
5 think this would be something that we're happy to think  
6 through. And it seems like the district is planning, under  
7 their reconfiguration plan, to have students there moving into  
8 this next year, so we don't and haven't been made aware of any  
9 reason why we wouldn't think it wouldn't be safe or secure.

10 THE COURT: Mr. Hooks, is the building safe for  
11 students right now?

12 MR. HOOKS: Your Honor, I would respectfully defer to  
13 the superintendent to answer that question.

14 THE COURT: All right. To the superintendent --

15 MS. CARTER: Yes, Your Honor.

16 THE COURT: -- is the school safe now?

17 DR. CARTER: The school is safe. The issue we have  
18 is the school is not ready for students to occupy because the  
19 restrooms are being redone. There is construction taking place  
20 there on campus. We're in the process of updating HVAC units.  
21 All of that was going to be ready in preparation for an August  
22 opening.

23 Judge Wingate, I appreciate your question simply because  
24 we have Mr. Cusick on the call making assumptions about the  
25 building being prepared, and he hasn't even been to my city and

1 my school district to see what's taking place here regarding my  
2 children. So thank you for your question.

3 If we had to put children in it today, no, it's not ready.  
4 There aren't restrooms ready. But it will be ready by the  
5 third week in July to receive children. So thank you for your  
6 question.

7 THE COURT: So back to my question about touring the  
8 facilities. So then, Dr. Carter, give me, again, your response  
9 to just the tour. Forget about the other portions of my  
10 question that dealt with a hearing of the community, leaders,  
11 or participants. But just on the matter of a tour, would I  
12 learn anything from a tour at this point that would not be  
13 presentable later on when the construction is finished?

14 DR. CARTER: No, sir, you wouldn't. What I could  
15 tell you is if you come on the right day and it's raining, you  
16 would see flooding in one of the schools I'm closing or  
17 recommending that we close. What I would tell you, if you came  
18 at the right time of day, you may hear gunshots in that  
19 particular side of town where we tend to have children on  
20 lockdown consistently.

21 What you will see if you go to Carver Middle School,  
22 hopefully Carver Elementary, is a secure gym space where  
23 children can play. You will see playground equipment that will  
24 be placed behind secure fencing. And as we continue to update  
25 our facilities, you will see secure parameters around those

1 schools. So we are looking at major upgrades to a middle  
2 school campus that will be an elementary school that would have  
3 remained vacant if we had not come back with a plan to propose  
4 children returning to that building, which is ultimately what  
5 the community wanted.

6 So to answer your question, coming at this point I don't  
7 think would give you any additional information. It would let  
8 you see that we're in the middle of upgrading the building. I  
9 think ultimately being able to close the discussion around if  
10 we need to open -- reopen Carver Middle School, which would be  
11 detrimental to those middle school children to take them out of  
12 where they've been for a year where they've become accustomed  
13 to being a part of clubs, athletic teams, extracurricular  
14 opportunities and to remove them and their teachers, which  
15 remember we had a partial staff at that point, back into a  
16 building Mr. Cusick hasn't even seen would not be in the best  
17 interests of children. And as superintendent, that is my  
18 ultimate goal --

19 THE COURT: Mr. Cusick --

20 DR. CARTER: -- to do what's best for children.

21 THE COURT: Mr. Cusick, your response to that.

22 MR. CUSICK: I'll just say that I know that this case  
23 has been going on for quite awhile, so Dr. Carter might not  
24 remember when I've been in Meridian, including on multiple site  
25 visits. I know I was there with Mr. Hooks and Mr. Compton

1 multiple times. So I just want to make sure that's accurate.

2 Again, I appreciate and understand Dr. Carter's position.  
3 That said, as attorneys certainly know, there is an active  
4 desegregation order in place. We maintain our same positions  
5 that before they were supposed to make this plan, they needed  
6 to seek the court's approval.

7 We're happy, again, if the court does decide it was not  
8 properly closed and there is some plan that needs to be put in  
9 place, we're happy to consult with the district and Department  
10 of Justice on how that would be. But again, I think that  
11 misses the point because, on the front end, they bear the  
12 burden to do so on the Carver Middle School.

13 And so I think that's why we kept making that process  
14 point before that none of us would be here in front of Your  
15 Honor today potentially if that had happened and there had been  
16 robust community input. But the consent decree is clear, the  
17 case law in this circuit is clear, that the presumption is with  
18 the consent order that they bear the burden to do so before  
19 closing that school. We had an evidentiary hearing on this.  
20 And everyone is maintaining their same positions on the only  
21 motion before the court.

22 MR. HOOKS: Your Honor, if I may speak to that  
23 briefly.

24 THE COURT: Okay.

25 MR. HOOKS: Your Honor, what Mr. Cusick is telling

1 the court is not true. The district did seek the court's  
2 approval prior to the closure of Carver Middle School. There  
3 was a motion filed on that in July. And that information was  
4 before the court and pending. So the court was well aware of  
5 the district's plan. The United States government was well  
6 aware and had no objection to it. And the fact that the  
7 district presented the motion, it came before the court, and  
8 that motion wasn't ruled on is not the fault of the district.  
9 So that is not true.

10 And second, Your Honor, again, Mr. Cusick is standing on  
11 this procedural issue of, well, the district went forward to  
12 close Carver Middle School and somehow has, I guess, violated  
13 the consent decree. And yet, Mr. Cusick had agreed that the  
14 district had eradicated the vestiges of the old dual system  
15 some three, almost four years ago now, and stipulated agreement  
16 to the settlement of the case.

17 So our position, Your Honor, is that what we would like to  
18 do, respectfully, is to move forward and keep our focus on the  
19 ultimate issue here, an objective which is the dismissal of the  
20 case and moving and getting to a place where we can have a  
21 fairness hearing on unitary status. That, to me, is -- and I  
22 think for the district -- the main focus here. And we'd like  
23 to leave the call with a date certain for our unitary status  
24 hearing, Your Honor. Thank you.

25 THE COURT: Mr. Hooks, let's talk about this battle

1 on the elementary school. The district has proceeded to make  
2 some determinations on the elementary school situation. And  
3 this was done without court permission; is that correct?

4 MR. HOOKS: No, sir. Your Honor, that plan is also  
5 put before the court as part of a second motion.

6 THE COURT: But it's a motion.

7 MR. HOOKS: It hasn't been filed yet, Your Honor. We  
8 have that draft here.

9 THE COURT: But I understand there has been a meeting  
10 of the school board to usher in some changes, modifications.

11 MR. HOOKS: Yes, sir. And superintendent sent the  
12 court a letter dated March 22nd, 2023, setting out the ideas  
13 for reconfiguring the elementary school. And we are happy to  
14 present a motion to modify the desegregation plan and put that  
15 before the court.

16 THE COURT: But it has not been submitted to the  
17 court at this point?

18 MR. HOOKS: Your Honor, we can submit that today.  
19 No, sir.

20 THE COURT: But the district has been making plans to  
21 execute on the elementary school plan even though the court has  
22 not passed on it.

23 MR. HOOKS: Your Honor, the district has interviewed  
24 members of the community to see what they would think. The  
25 district presented the idea both to the LDF and to the



1 Department of Justice to see if they would object to it or not.  
2 So I would say -- and superintendent can speak to this and  
3 Mr. Compton can -- the district has been doing its homework on  
4 it in an effort to present to the court what it hoped would be  
5 an unopposed motion to move forward with the elementary plan.

6 THE COURT: After the district moved forward on the  
7 middle school and after the district saw the pleadings  
8 involving that controversy that was filed subsequently and saw  
9 the plaintiffs' objection, among other things, that the school  
10 system had not sought court approval to do what it did under  
11 the desegregation order, why would the school system move so  
12 far apace on the elementary school plan without even filing  
13 that matter before a federal court?

14 MR. HOOKS: Your Honor, the district presented the  
15 court by letter dated March 22nd, 2023, a very detailed  
16 page-and-a-half plan informing the court of its ideas with  
17 regard to the elementary school.

18 THE COURT: Okay.

19 MS. COMPTON: Your Honor, it's John Compton. If I  
20 might add on behalf of the district. The district also  
21 communicated with community leaders, the Carver Coalition, and  
22 thought that this might resolve their objection to closing of  
23 Carver as a middle school by reopening it as an elementary  
24 school. And the district got no negative feedback from the  
25 Carver Coalition or from the community members that came to

1 those meetings that Dr. Carter hosted.

2 That is why we thought this would be an unopposed motion  
3 and thought it would be a resolution of the objection that was  
4 filed last year to the closing of Carver because Carver would  
5 not be closed. It would be reopened as an elementary school.  
6 And we thought that would be a resolution of the whole matter.

7 As I appreciated LDF's objection, I thought it was solely  
8 on the closing of Carver because of its historic nature in the  
9 district. And by reopening it, we thought that would resolve  
10 the whole matter. But apparently, that's not going to be the  
11 case.

12 THE COURT: Well, that's my point. So then, the  
13 responsibility of the school system was to make sure that  
14 matter got in front of the court and that the school district  
15 got a ruling on it before they actually took some steps. You  
16 didn't do that. That would normally be a matter -- that would  
17 normally be a matter of contempt for not doing it.

18 And then after having not done it or gotten a ruling on  
19 the middle school, the school system seems to be right back at  
20 it on the elementary school. That matter has not even been  
21 filed to the court, but nevertheless this matter has been  
22 discussed among a number of concerned persons, and this court  
23 was not allowed privy to what was going on on this matter as to  
24 get a ruling on this matter before the school district went  
25 forward.

1           Ordinarily -- ordinarily -- when a bound individual to a  
2       court's clear declarations, as they would be in a case like  
3       this, to move forward to close a school, the entities involved  
4       know that the desegregation plan calls for the court's  
5       approval. The school system apparently ignored that particular  
6       facet and seemingly was moving forward on the elementary  
7       school, again, without notifying the court and getting the  
8       court's approval.

9           And the key is court's approval, not what they thought was  
10      going to happen, not what they thought was going to result in a  
11      settlement. But there is a procedure for this, and the school  
12      system didn't follow it on the first instance and seemingly,  
13      had this call not been made, may not have followed it on the  
14      second.

15          So I asked the question the other day as to whether  
16      Mr. Cusick was arguing here that because of this failure would  
17      that be enough in of itself to negate all the actions of the  
18      school system with regard to the middle school and even with  
19      regard to the elementary school? Would that factor alone be  
20      enough to say that the school district is not in compliance  
21      with its obligations to the court?

22          Now then, Dr. Carter, you had your hand up, so do you have  
23      something you want to add?

24                DR. CARTER: Yes, sir. Thank you, Your Honor. At  
25      the end of each one of our community meetings, our parent

1 meetings, I ended with next steps. And the final next step on  
2 that list was to notify the courts and pending approval for the  
3 elementary reconfiguration plan.

4 So I have that document. I can send it to the court if  
5 need be, but I ended each one of those sessions letting the  
6 community know the next step would be to notify the court  
7 regarding what we were doing with the elementary  
8 reconfiguration.

9 So please don't think this time around the district  
10 disregarded the fact that it needed to come before the court  
11 because that was the last item on the next steps list that I  
12 shared in every community meeting. So I just wanted to clarify  
13 that, Your Honor. I don't know if it helps or hurts, but I  
14 wanted to clarify that.

15 THE COURT: Well, a surmise that a matter might be  
16 subject to compromise and settlement still does not excuse the  
17 school system from securing the approval. And because there  
18 was no approval secured, then Mr. Cusick is still maintaining  
19 his objection.

20 So now, if the court is going to rule with the school  
21 system on its address of Carver Middle, the court still has to  
22 make some mention of the school district's failure to obtain  
23 approval, and then the court has to make some determination of  
24 what weight to be given to that in the overall appraisal of  
25 this entire situation. As I said before, this is why the court

1 asked the question on yesterday that I asked whether the  
2 refusal to get permission from the court and to act anyway,  
3 would that, by itself, be enough for the court then to say that  
4 the court is against the school system's plan on Carver on the  
5 middle school matter.

6 So I asked that question. In fact, I asked that question  
7 even before that back when we had the hearing before. And, in  
8 fact, I had instructed my law clerk to research that particular  
9 issue back at that time to see where we might stand on that  
10 issue.

11 And so when I heard about the -- and this was the  
12 second-hand about the elementary matter, because it was not  
13 presented to me as an oral matter. I saw the letter that came  
14 in, and then I decided to hold a hearing on it. But  
15 nevertheless, this is an issue that never should have been  
16 before the court. It is before me. And an explanation of why  
17 the school system went forward without approval from the court  
18 has not been provided.

19 I looked through the papers. I saw an explanation of what  
20 the school district thought might happen, but I didn't see any  
21 legal excuse for why the district could go forward without this  
22 court's permission.

23 Now, Dr. Carter, since you are a driving force here, did  
24 you ever think you had a legal position to do this?

25 DR. CARTER: Your Honor, from --

1 THE COURT: Now, if it's going to invade  
2 attorney-client privilege, don't answer.

3 DR. CARTER: I don't think --

4 THE COURT: If you need to confer with Attorney Hooks  
5 over here, then you have a right to do that too if you wish.

6 DR. CARTER: I don't think it will. From my  
7 understanding, when we started looking at closures, I went back  
8 and I researched -- I started looking at the first step would  
9 be to notify the district's attorneys regarding the intention  
10 to reconfigure or close the school. And so the next step from  
11 that would have been to notify the school board of a  
12 recommendation. And then when and if the school board approves  
13 or they act, then the attorneys move forward with notifying the  
14 courts.

15 So that process has been followed up to date. I'll defer  
16 to the attorneys at that point because that is the scope of my  
17 work. I make the recommendation to the school board. The  
18 school board acts. And then we notify the attorneys from  
19 there. And then getting court dates and getting next steps, I  
20 leave that to the attorneys.

21 I'm pretty much an educator, Judge, so my call is to make  
22 sure any time we're moving forward with anything that will  
23 pertain to the district that has a legal ramification, I take  
24 it to the school board. Then we, in turn, notify the attorneys  
25 from there.

1 THE COURT: Let me switch subjects now.

2 DR. CARTER: So I --

3 THE COURT: Let me switch subjects. Let me go back  
4 to this potential school view. You're saying that presently  
5 the condition, the construction stance or status of the schools  
6 is such that a view of those structures would not be  
7 informative to the court.

8 DR. CARTER: The court, again, is welcome to come  
9 view the campuses. What I'm saying is we are going through  
10 renovations. I think coming to view the campus would be the  
11 decision of yours, Judge Wingate. I wouldn't have an issue  
12 with it. What you would see, again, is we're in the process of  
13 updating restrooms. We're in the process of painting the  
14 building. We're in the process of getting it ready to occupy  
15 children.

16 THE COURT: And that school you spoke about that has  
17 water, is that Oak Ridge?

18 DR. CARTER: That's Oakland Heights, yes, sir.

19 THE COURT: Oakland. I'm sorry. Yes.

20 DR. CARTER: Yes, sir. Any time we get a hard rain,  
21 there is flooding that happens in the hallways. There's  
22 flooding that happens in classrooms. I met with my staff very  
23 early on during the school year. And even from the beginning  
24 of our conversations last spring regarding reconfiguration of  
25 schools, we talked about we would come back and have

1 discussions regarding elementary schools.

2 In all honesty, Judge, I didn't even think Oakland Heights  
3 would be one of the campuses that we would end up needing to  
4 reconfigure. I thought it would be on another side of town  
5 somewhere because I was looking at enrollment numbers, just  
6 like Carver and Magnolia and Northwest Middle School. But once  
7 I started talking with the staff, looking at the conditions,  
8 looking at the amount that it would cost to repair that  
9 building and then looking at the number of lockdowns that that  
10 school experienced, that's how Oakland Heights ended up being  
11 one of those recommended closures. And when I spoke with the  
12 staff, they understood that we were trying to do better than  
13 what we were doing.

14 The scary part about operating old buildings, Judge  
15 Wingate and team, is sometimes it's a fear that there is a  
16 level of complacency that takes place. I was in a first grade  
17 classroom, and I shared this with LDF and DOJ. And the first  
18 grade teacher was teaching. My babies were sitting on the  
19 carpet, and there was water pouring down the classroom wall as  
20 they were learning.

21 They were moving forward, but I could see the teacher  
22 assistant, the custodians, the principals doing everything they  
23 could to ensure that that did not disrupt learning. I don't  
24 know how anyone on this call will think that that's fair for  
25 children, especially children of color who we're trying to make



1 sure that they have equal opportunities as anyone else.

2 So to go back, feel free to come visit, Judge. You'll see  
3 some of those conditions if we have a heavy rain. On  
4 other days, you'll see where we've thrown paint on a wall.  
5 It's like plastering lipstick on a pig. You're not going to  
6 sit there and go, Okay, we're just going to let it look  
7 deplorable. What we've tried to do is make it look as best it  
8 can for our children that show up there every day. So feel  
9 free. Come on over and see the campuses. I'd love to take you  
10 on a tour.

11 THE COURT: Mr. Cusick, how is it really instructive  
12 and helpful to isolate the middle school from the elementary  
13 school situation when their remedies are so radically opposed?  
14 For the middle school, there's a closure. For the elementary  
15 school, there's an opening. And there's a proposal from the  
16 school system that the ultimate goal is to open.

17 So why should the court then busy itself about a closure  
18 of a school that the district -- the school system says they  
19 ultimately want to open and that there is no objection to it.  
20 Do you have objections to the elementary school plan?

21 MR. CUSICK: I think, Your Honor -- I know I've  
22 mentioned this a number of times -- but the difficulty for us  
23 here is that I know Mr. Hooks made the representation, but if  
24 you look at ECF Number 167, the school board voted on May 26th,  
25 2022, to unanimously close Carver Middle School. They waited

1 more than two months to reach out to plaintiffs, to reach out  
2 to this court and seek approval on that. And so that is the  
3 motion we have before us on this case.

4 And you certainly heard yesterday, as we talked about,  
5 some different competing considerations. Again, in that same  
6 motion, if you look at paragraph 8 on pages 3 and 4, they  
7 proceeded to also reassign and to move forward, again, as Your  
8 Honor noted, before without actually seeking court approval,  
9 though they asked for it on the back end to accommodate.

10 I know Mr. Compton and Dr. Carter have made a number of  
11 representations about community members' views. We've had a  
12 chance in the meantime, my colleagues, to talk to plaintiffs  
13 and some community members who were in attendance during the  
14 hearing back in August 2022. And if the court thinks it's  
15 beneficial to hear from them and other members at a community  
16 meeting on the closure of the middle school, to hear more about  
17 that if they think it would be beneficial, again, we defer to  
18 Your Honor.

19 We think the record is secure. But if that is still an  
20 issue that the court wants to hear more from, we're happy, and  
21 they think it would be helpful or fruitful to speak directly to  
22 the court on those issues and to -- and so the court can assess  
23 whether the representations made here today by the district and  
24 Mr. Compton match up to the conversations represented.

25 THE COURT: All right. Thank you all very much. I

1 am going to submit something to you in the next couple of days  
2 on the court's plans to address either one of these two or both  
3 of these two matters I mentioned earlier about visiting to get  
4 an eye view of the structures there and/or to hear from persons  
5 in the community. I will send something to you by way of a  
6 filing.

7 As I understand it, the Department of Justice has no  
8 objection to either plan; is that correct?

9 MS. SINGLETON: That's correct, Your Honor. We defer  
10 to you as to whether you would like to visit the school and/or  
11 arrange a community meeting. I just would like to note that  
12 the two of us are not available to travel in the next  
13 two weeks, so we would request the opportunity to participate  
14 in a community meeting, if you chose to hold one, virtually if  
15 that's possible.

16 THE COURT: All right. As I said earlier, I'm not so  
17 sure it could be done that fast because my staff informed me  
18 that there's a holiday coming up and that would have a bearing  
19 on this whole matter. And I had not thought about that on  
20 yesterday at the time I thought about this matter. But there's  
21 a holiday coming up that could wreck some of these plans.

22 I didn't think about it because I have another case where  
23 I have some matters that I intend to address over the holidays,  
24 and so I hadn't given that any thought. I should have, but I  
25 didn't, because of that, because I knew I was going to be here

1 and probably in court. And so I need to try and see if I can  
2 put all of this together.

3 So I'll send something to all of you on Monday about where  
4 the court is because I still desperately want to get out a  
5 ruling on these matters as fast as possible, and that's why I  
6 was asking you your views on the matter, because if I was going  
7 to schedule something about coming over there, then I wanted to  
8 know what was the best time and quickest time to do it  
9 considering all these other elements of potential  
10 interruptions, like the holiday, et cetera. And so now that,  
11 I've heard from you, I'll digest this and I'll put out probably  
12 a two-page order on Monday telling you what I intend to do.

13 Now, are there any questions from anyone on our  
14 discussions thus far?

15 MR. CUSICK: Yes, sir.

16 MR. HOOKS: This is John Hooks. Would it be possible  
17 for us to hear from the court on its intention with regard to  
18 the pending motion -- the joint motion to approve the  
19 settlement agreement, and can we leave the call today with a  
20 date certain on the fairness hearing?

21 THE COURT: If you can give me some ideas if  
22 you-all -- have you talked to counsel opposite on this matter?

23 MR. HOOKS: Yes, sir. We have previously presented  
24 dates in that motion for the fairness hearing. Those have  
25 obviously now --

1 THE COURT: So then can you-all get together?

2 MR. CUSICK: -- passed us by.

3 THE COURT: Well, then, why don't you-all get  
4 together and make a proposal to me about a day for the fairness  
5 hearing.

6 MR. HOOKS: Okay.

7 THE COURT: And I'll check my schedule and see if I  
8 can agree with any date that you submit.

9 MR. HOOKS: All right. Your Honor, may I make an  
10 additional comment?

11 THE COURT: Okay.

12 MR. HOOKS: Your Honor, I think if one goes back and  
13 looks at the affidavit that Dr. Carter provided to the court on  
14 the motion that was presented with regard to Carver Middle  
15 School, I think that one can see the situation that Dr. Carter  
16 is in is a desperate circumstance. And she is waking up every  
17 day confronting a pretty massive loss of enrollment, a massive  
18 loss of teachers. And as she reported a moment ago, she's got  
19 students who are in what some might describe as a war zone,  
20 bullets and so forth. It is a rather desperate situation. And  
21 she and the school board are trying to grapple with that and to  
22 confront those issues, and they're having to make very hard  
23 decisions.

24 Now, some of the wrangling around and presenting the  
25 motions and trying to make this fit the court's schedule is at

1 odds with the urgency that Dr. Carter has been operating under.  
2 And I accept any responsibility for things and when they're  
3 filed and so on, and Mr. Compton and I are the lawyers and  
4 we're trying to make the judicial process line up with the  
5 school process, but Your Honor, those things are not quite  
6 perfectly aligned.

7 And so with respect to the closure of Carver, it is true  
8 the school district -- the board made some decisions with  
9 regard to that, but never was it contemplated, I don't think,  
10 by the school board or the superintendent that they would take  
11 action without bringing it to the court's attention and, in  
12 fact, did, presented a motion on that.

13 And also behind the scenes what's been happening with  
14 respect to Carver and also with regard to the elementary  
15 schools are plans that are made with respect -- let's go back  
16 to the closure of Carver. There's a lot that goes on with  
17 respect to the study of that and whether it's feasible and  
18 whether it's necessary and so on. And then those plans are, in  
19 essence, presented to the Legal Defense Fund and to the  
20 Department of Justice.

21 But if we were to go to them -- the school district were  
22 to go to them with a sort of half-baked plan or just ideas and  
23 that kind of thing, it may not be helpful for discussions at  
24 all. This time, however, I will report that early on in this  
25 process, the school district has been sharing with both the

1 Legal Defense Fund and the DOJ and, in fact, the court as early  
2 as March information about its ideas with regard to these  
3 elementary school closures.

4 But I just wanted to close by saying that these are not  
5 typical closures where the schools are -- Dr. Carter and her  
6 team are contemplating closures just for the sake of closing  
7 schools. They are decisions that weigh on Dr. Carter and her  
8 team and that are the result of rather desperate circumstances  
9 that she's confronted with that probably don't have good  
10 alternatives otherwise, Your Honor. Thank you.

11 THE COURT: Mr. Cusick, you said you also wanted to  
12 address.

13 MR. CUSICK: Yes, just two points, Your Honor.  
14 First, to the extent the court does deem a community hearing of  
15 some sort is helpful, we wouldn't be opposed to, if the  
16 technology is feasible depending on the venue, for there to be  
17 some remote option either to make it more accessible either for  
18 community members and the Department of Justice to attend.

19 And on the second point, I think we've raised this now  
20 multiple times, and it's still within our request for this  
21 status conference that we're happy to move forward with the  
22 joint settlement approval motion, but we can't do so until  
23 there's a decision on this initial motion for the middle school  
24 closure, and so we join, again, and re-up the expedited nature  
25 to the extent that the court can to make that resolution first.

1 And then afterwards, we're happy to consult with Mr. Hooks,  
2 Mr. Compton, and the district to see what, if any, impact that  
3 decision has on settlement.

4 THE COURT: Ms. Singleton, anything else?

5 MS. SINGLETON: No, Your Honor.

6 THE COURT: All right. Then I thank all of you for  
7 being available on short notice on my two questions. I didn't  
8 anticipate some of the responses I got, though, on addressing  
9 those particular matters. But I will send something to you on  
10 Monday and tell you where the court is in its thinking on these  
11 matters after I have now conversed with you on them.

12 So thank you all very much, and I will be in communication  
13 with you by way of a written order on Monday. All right.  
14 Thank you now.

15 MS. SINGLETON: Thank you.

16 MR. HOOKS: Thank you.

17 (Proceedings concluded at 10:23 a.m.)  
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CERTIFICATE OF REPORTER

I, Margaret Wasmund, RDR, CRR, CRC, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 21st day of May 2023.

*Margaret Wasmund*  
MARGARET WASMUND, RDR, CRR, CRC  
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